United Nations PCNICC/2001/L.1/Rev.1/Add.1

Preparatory Commission for the International Criminal Court

Distr.: Limited
14 March 2001

Original: English

New York
26 February-9 March 2001
24 September-5 October 2001

Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001)

Addendum

Annex II

A draft relationship agreement between the United Nations and the International Criminal Court

Discussion paper proposed by the Coordinator*

The United Nations and the International Criminal Court,

Bearing in mind that in accordance with the Charter of the United Nations, the main purposes of the United Nations, inter alia, are to bring about by peaceful means, in conformity with the principles of justice and international law, the settlement of international disputes or situations that might lead to a breach of the peace and to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Acknowledging the key role played by the United Nations under the Charter in the peaceful settlement of international disputes and in solving international problems of an economic, social, cultural or humanitarian character,

Bearing in mind that the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 adopted the Rome Statute of the International Criminal Court,[1]

Noting the important role assigned to the International Criminal Court in dealing with the most serious crimes of concern to the international community as a

* The Working Group will consider the structure of the draft at its next session; the Working Group deferred consideration of the preamble to its next session.

[1] A/CONF.183/9.

01-28610 (E) 190301

whole, as referred to in the Rome Statute, and which may threaten the peace, security and well-being of the world,

Bearing in mind that, in accordance with the Rome Statute, the International Criminal Court is established as an independent permanent institution in relationship with the United Nations system,

Recalling that, in accordance with article 2 of the Rome Statute, the International Criminal Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to the Rome Statute and thereafter concluded by the President of the Court on its behalf,

Recalling also that the Rome Statute of the International Criminal Court reaffirms the Purposes and Principles of the Charter of the United Nations,

Noting the responsibilities of the Secretary-General of the United Nations under the provisions of the Rome Statute of the International Criminal Court and, in particular, under its article 123 concerning the convening of Review Conferences,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

Taking into account for this purpose the provisions of the Charter of the United Nations and the provisions of the Rome Statute of the International Criminal Court,

Have agreed as follows:

Article 1
Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

Article 2
Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court recognizes the responsibilities of the United Nations under the Charter.

3. The United Nations and the Court respect each other's status and mandate.

Article 3
Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely,

whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

Article 4
Cooperation between the Security Council of the United Nations and the Court

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b), a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.

2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.

3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure of cooperation with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

Article 5
Cooperation between the United Nations and the Prosecutor

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with that article.

2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with paragraph 2 of article 15 of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality

and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor, the United Nations, or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 6
General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to paragraph 6 of article 87 of the Statute.

2. The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the Charter and the Statute.

3. In the event that disclosure of information or documents, or the provisions of other forms of cooperation would endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.

Article 7

(Now article 10 (1) (c))

Article 8
Rules concerning United Nations privileges and immunities[2]

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the Organization, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures in order to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities.

Article 9
Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to

[2] The Working Group will reconsider this article at the next session; the Working Group also deferred consideration of additional paragraphs to this article to the next session.

the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations, where observers are allowed, and whenever matters of interest to the Court are under discussion.

2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

3. Subject to the applicable provisions of the Rules of Procedure and Evidence, the United Nations shall have a standing invitation to attend public hearings of the Chambers of the Court that relate to cases of interest to the Organization.

4. Subject to the rules governing its operation, the Assembly of States Parties ("the Assembly") shall invite the United Nations to send observers to its meetings whenever matters of interest to the Organization are under discussion.[3]

Article 10
Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:

(a) The Secretary-General shall:

(i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of paragraphs 1 and 2 of article 123 of the Statute related to the convening by the Secretary-General of Review Conferences;

(iii) In addition to the requirement provided in paragraph 7 of article 121 of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute;[4]

(b) The Registrar shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation related to pleadings, oral proceedings, judgements and orders, when the Court deems it appropriate;

[3] Some delegations suggested the deletion of this paragraph.
[4] Some delegations questioned the need for this subparagraph.

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute;

(c) The Court shall keep the United Nations informed about proceedings of the Court in cases that involve crimes committed against the personnel of the United Nations or involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They shall strive to combine, where appropriate, their efforts to secure the greatest possible usefulness and utilization of such information.

Article 11
Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

Article 12
Reports to the United Nations

The Court may, if it deems it appropriate, submit on its activities reports to the United Nations through the Secretary-General.

Article 12 bis[5]
Agenda items

1. The United Nations may propose items for consideration by the Assembly. In such cases, the Secretary-General shall notify the President of the Bureau of the Assembly accordingly, providing any relevant information with a view to the possible inclusion of such item in the provisional agenda of the following session of the Assembly or of its Bureau.

2. The Court may propose items for considerations by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to

[5] The Working Group did not have time to consider articles 12 bis to 21 at the current session.

the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 13[6]
Request for advisory opinion from the International Court of Justice

The United Nations and the Court agree that a recommendation by the Assembly for referral to the International Court of Justice under paragraph 2 of article 119 of the Statute which involves a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter.

Article 14
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.

2. The United Nations and the Court agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;

(b) Cooperate in the interchange of personnel, where appropriate;

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 15
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas provided that there are cost savings.

Article 16
Conference services and facilities

1. The United Nations agrees that, upon the request of the Court, the United Nations shall, subject to availability and to any arrangement on costs and expenses referred to in paragraph 2 of article 18 of the present Agreement, provide to the Court such facilities and services at United Nations Headquarters as may be required for the meetings of the Assembly and of its Bureau, including translation and interpretation services, documentation and conference services.

2. The terms and conditions on which any such facilities or services of the United Nations may be provided to the Court shall, as appropriate, be the subject of supplementary arrangements.

[6] The Working Group deferred to the next session consideration of revised texts for this article proposed by some delegations.

3. The United Nations and the Court shall endeavour to facilitate access by the representatives of all States Parties to the Statute and observers in the Assembly, as provided for in paragraph 1 of article 112 of the Statute, to United Nations Headquarters where a meeting of the Assembly is to be held.

Article 17 [7] [8]
Laissez-passer

Without prejudice to the right of the Court to issue its own travel document, and in particular in the absence of any such travel document, the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and officials of the Office of the Prosecutor and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General and the Court, to use the laissez-passer of the United Nations as a valid travel document[9] where such use is recognized by States Parties to, and in accordance, with the Agreement on the Privileges and Immunities of the International Criminal Court, concluded pursuant to article 48 of the Statute, or other agreements defining the privileges and immunities of the Court.

Article 18
Financial matters

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to articles 115 and 116 of the Statute shall be subject to separate arrangements.

2. The United Nations and the Court further agree that the costs and expenses resulting from the cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 18 bis
Other agreements concluded by the Court

The United Nations and the Court shall consult, when appropriate, on the conclusion and registration by the United Nations of agreements concluded by the Court with States or international organizations.

[7] Some delegations questioned whether this article was necessary. Some delegations also suggested that consideration of this article should be deferred pending the completion of the articles on the privileges and immunities of the Court.

[8] Some delegations suggested that this article should be simplified and shortened.

[9] A suggestion was made to end the article after this word.

Article 19
Supplementary arrangements for the implementation of the present Agreement

The Secretary-General and the Court may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 19 bis
Settlement of disputes

The United Nations and the Court agree to settle any dispute related to the interpretation or application of this Agreement by appropriate means.

Article 20[10]
Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify in writing the other of the date of such approval and the Agreement shall enter into force on the date of the later of the said approvals.

Article 21[11]
Entry into force

The present Agreement shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval and the Agreement shall enter into force on the date of the later of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this _____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.

[10] Some delegations suggested the inclusion of a paragraph on the provisional application of this Agreement.

[11] Idem.

Appendix

The Working Group deferred consideration to its next session of the proposals set out below.

Proposals for article 8[a]

Add the following new paragraph 2:

"If the Court requests the testimony of an official of the United Nations or one of its programmes, funds or agencies, the Organization undertakes to cooperate with the Court and, if necessary, will waive that person's obligation of confidentiality. The Secretary-General may request the Court to take all necessary measures to ensure the person's protection, guarantee the confidentiality of any information and documents which he or she may transmit to the Court, and safeguard the security of any operation or activity of the United Nations concerning which the person might testify before the Court."

Add the following new paragraph 3:

"The Secretary-General may be authorized by the Court to appoint a representative to assist any official of the United Nations who is summoned to appear as a witness in proceedings conducted by the Court."

Proposals for article 13

Proposal A
International Court of Justice[b]

"The United Nations and the Court agree that a recommendation by the Assembly of States Parties under paragraph 2 of article 119 of the Statute or an initiative by the Court to refer to the International Court of Justice a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter."

Proposal B
Request for an advisory opinion[c]

"The General Assembly of the United Nations, in accordance with Article 96 of the Charter, shall take the necessary steps to enable the Assembly of States Parties to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of its activities, with the exception of a question that concerns the exercise by the International Criminal Court of its judicial competence or the mutual relationship between the Court and the United Nations."

[a] See PCNICC/2000/WGICC-UN/DP.6.
[b] See PCNICC/2001/WGICC-UN/DP.6.
[c] See PCNICC/2001/WGICC-UN/DP.8.

Proposals for article 16[d]

Add the following new paragraph 1:

"1. The Organization may, upon request of the Court, make available to the States Parties such facilities and technical services as may be required for the holding of the regular annual meetings and special sessions of the Assembly of States Parties and of meetings of its Bureau, including translation, interpretation, documentation and secretariat services. When the Organization is unable to meet the request of the Court, it shall notify the Court accordingly, giving reasonable notice."

Add the following new paragraph 2:

"2. The use of the Organization's facilities and technical services by the Assembly of States Parties, in the cases referred to in paragraph 1 of this article, shall take place in accordance with the modalities established by common agreement between the Court and the Organization."

Add the following new paragraph 3:

"3. The modalities and conditions for the use of the Organization's facilities and services by the Court in other cases may be the subject of separate agreements."

Proposals for article 18[e]

Paragraph 1

"The United Nations and the Court agree to make a separate arrangement governing the conditions according to which funds are allocated to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute. Such arrangement shall be submitted to the Assembly of States Parties and the General Assembly of the United Nations for approval."

Paragraph 2

"The United Nations and the Court further agree that the costs and expenses resulting from the cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements. At the request of any State Party, ~~T~~the Registrar shall inform the Assembly of States Parties ~~shall be kept informed through the Registrar~~ of the making of such arrangements."

Paragraph 3

The text is that of paragraph 3 of the text submitted by the Coordinator.

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[d] See PCNICC/2000/WGICC-UN/DP.6.
[e] See PCNICC/2001/WGICC-UN/DP.9.